

87-2061

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.

FILED

JUN 15 1988

JOSEPH F. SPANIOLO, JR.

CLERK

DOROTHY COLLINS, *et al.*,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

APPENDIX TO PETITION FOR WRIT
OF CERTIORARI

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A1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOS. 86-4024
87-3070
87-3138
87-3139

DOROTHY COLLINS, on behalf of her minor children; James Collins, Dorothy Collins and Warren Collins, individually and on behalf of all others similarly situated,

Plaintiffs-Appellees (86-4024),

LINDA ELAM,

Plaintiff-Appellee (87-3070/3139),
Cross Appellant (87-3138),

v.

PATRICIA K. BARRY, Director of the Ohio Department of Human Services,

Defendant-Appellant (86-4024/87-
3070),
Cross Appellee (87-3138),

OTIS BOWEN, individually and in his official capacity as Secretary of Health and Human Services,

Defendant-Appellant (87-3139).

Before: MILBURN and GUY, Circuit
Judges; and CONTIE, Senior
Circuit Judge.

J U D G M E N T

ON APPEAL from the United States
District Courts for the Northern and
Southern Districts of Ohio.

THIS CAUSE came on to be heard on the
records from the said district courts and
was argued by counsel.

ON CONSIDERATION WHEREOF, it is now
here ordered and adjudged by this court
that the judgments of the said district
courts in this case be and the same are
reversed and vacated; and the cases are
remanded to the respective district
courts with instructions to enter
judgments for the defendants.

Each party is to bear its own costs on
appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

Clerk

Nos. 86-4024; 87-3070/3138/3139

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOROTHY COLLINS, ON BEHALF OF HER
MINOR CHILDREN, JAMES COLLINS,
DOROTHY COLLINS AND WARREN
COLLINS, INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff-Appellee
(86-4024),

LINDA ELAM,

Plaintiff-Appellee
(87-3070/3139),
Cross-Appellant
(87-3138),

v.

PATRICIA K. BARRY, DIRECTOR OF THE
OHIO DEPARTMENT OF HUMAN
SERVICES,

Defendant-Appellant
(86-4024, 87-3070)
Cross-Appellee
(87-3138),

OTIS BOWEN, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendant-Appellant
(87-3139).

ON APPEAL from the
United States District
Courts for the Northern
and Southern District of
Ohio.

Decided and Filed March 21, 1988

Before: MILBURN and GUY, Circuit Judges; and CONTIE, Senior Circuit Judge.

MILBURN, Circuit Judge. In these consolidated appeals, defendants-appellants Patricia Barry, Director of the Ohio Department of Human Services ("Director"), and Otis Bowen, Secretary of Health and Human Services ("Secretary"), appeal the orders of the district courts granting preliminary and permanent injunctions and holding that the policies of the defendants implementing the Aid to Families with Dependent Children ("AFDC") program family filing unit provision of the Deficit Reduction Act of 1984 ("DEFRA") are violative of federal law. For the reasons that follow, we reverse the judgments of the district courts and vacate the injunctions.

I.

A.

No. 86-4024—Northern District of Ohio

One of the consolidated appeals originates out of a class action filed by plaintiff Collins in the district court on October 15, 1969. In that action, Collins claimed that the Director's inclusion of Old Age, Survivors, and Disability Insurance ("OASDI" or "Title II") benefits and recipients within the standard filing unit used to determine AFDC eligibility was contrary to federal law and therefore should be enjoined. On January 22, 1971, the district court certified Collins' action as a class action, found for plaintiffs and issued an injunction prohibiting the complained of actions.

On May 2, 1986, plaintiff Collins filed a motion to show cause alleging that the Director had unjustifiably violated the

injunction issued on January 22, 1971, by again considering OASDI benefits and recipients as part of the AFDC filing unit. The Director claimed that statutory changes enacted by DEFRA undercut the basis for the injunction, and therefore it was no longer valid. Accordingly, on these grounds, the Director filed on June 11, 1986, a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Since both motions required the district court to construe 42 U.S.C. § 602(a)(38), the motions were decided jointly.

On September 19, 1986, the district court issued an order finding the Director in contempt of its January 22, 1971, injunction. The Director's motion for relief from judgment was denied. *Collins v. Barry*, 644 F. Supp. 249 (N.D. Ohio 1986). On September 30, 1986, the Director filed a notice of appeal and a motion to stay enforcement of the order pending appeal to this court. The stay was granted.

B.

Nos. 87-3070; 87-3138; 87-3139—Southern District of Ohio

On February 12, 1986, plaintiff Elam filed an action against the Director in the district court for herself and as next friend for her daughter, Tina Brayton. Among other things, Elam alleged that the state had incorrectly counted the OASDI benefits received by Tina, as a coresident sibling, in determining the AFDC eligibility of her household. On March 13, 1986, the state impleaded the Secretary as a party defendant, and on March 27, 1986, Elam filed an amended complaint in which she asserted that the Secretary's regulatory guidelines were contrary to federal law. Elam also sought certification of a class and both preliminary and permanent injunctive relief.

The Secretary and the Director filed memoranda in opposition to Elam's motion to certify and her motion for prelimi-

nary and permanent injunction. Subsequently, the district court denied Elam's motion to certify her cause as a class action, but, relying on *Collins*, granted the request for injunctive relief. *Elam v. Barry*, 656 F. Supp. 140 (S.D. Ohio 1986). Judgment was entered on December 31, 1986.

On January 16, 1987, the Director moved to stay enforcement of the district court's order pending appeal and filed its notice of appeal, and the district court granted the Director's motion to stay enforcement on January 21, 1987. The Secretary filed a timely notice of appeal, and plaintiff Elam likewise filed a timely notice of appeal from the court's denial of class certification.

On February 23, 1987, this court *sua sponte* entered an order staying proceedings in these consolidated appeals until the United States Supreme Court rendered a decision in *Gilliard v. Kirk*, Supreme Court No. 86-564. That opinion was rendered on June 25, 1987. *Bowen v. Gilliard*, 107 S. Ct. 3008 (1987).

II.

A.

Plaintiffs initially challenge the state and federal regulations implementing DEFRA's redefinition of the AFDC family filing unit, 42 U.S.C. § 602(a)(38). In *Bradley v. Austin*, slip op. No. 87-5248, also decided today, the same federal statute and regulations and virtually identical state regulations were challenged. In *Bradley*, where the same statutory arguments were raised, we held that the regulations are consistent with the statute authorizing them and with federal law governing Title II social security benefits. *Bradley* controls our decision in this case on these issues.¹

¹As we hold that the district court erroneously granted injunctive relief, we need not reach plaintiff Elam's contention in her cross-appeal that the district court erroneously denied her class certification.

B.

However, the Collins case comes to us in a different procedural posture than *Bradley* and has an additional issue for this court to resolve. Plaintiff Collins contends that if this court should find, as it does, that the regulations in question do not violate federal law, we should still affirm the district court's finding that the Director was in contempt of court. Collins argues that even if the law upon which the injunction was based had changed, the Director was still bound by the injunction until it was modified or vacated by the court entering the injunction, and therefore was properly found in contempt and was properly ordered to restore benefits reduced or terminated as a result of the regulatory change.

While the invalidity of a court order is generally not a defense in a criminal contempt proceeding alleging disobedience of the order, *Fernos-Lopez v. United States District Court*, 599 F.2d 1087, 1091 (1st Cir.) (per curiam), cert. denied, 444 U.S. 931 (1979), "a finding of civil contempt is invalidated if the underlying order is invalidated." *Squillacote v. Local 248, Meat & Allied Food Workers*, 534 F.2d 735, 746 (7th Cir. 1976); see also *Ager v. Jane C. Stormont Hospital and Training School for Nurses*, 622 F.2d 496, 499 (10th Cir. 1980). "A party held only in civil contempt by way of compensation to his adversary will be absolved of liability if the court order was invalid or erroneous[, as] [t]he adversary should realize no gain from orders to which he was not entitled." *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 828 (5th Cir. 1976); see *United States v. Campbell*, 761 F.2d 1181, 1185 (6th Cir. 1985) ("a party cannot be held in civil contempt of an order that is itself not valid.").

"[T]he objective of a civil contempt decree is to benefit the complainant." *Latrobe Steel Company v. United Steelworkers of America*, 545 F.2d 1336, 1343 (3d Cir. 1976). Thus, the distinction between civil and criminal contempt should be illustrated.

The primary purpose of a criminal contempt is to punish defiance of a court's judicial authority. Accordingly, the normal beneficiaries of such an order are the courts and the public interest. On the other hand, civil contempt is characterized by the court's desire "to *compel* obedience of the court order or to compensate the litigant for injuries sustained from the disobedience." The remedial aspects outweigh the punitive considerations. Thus, the primary beneficiaries of such an order are the individual litigants. The judicial system benefits to a lesser extent.

Ager, 622 F.2d at 499-500 (citations omitted) (emphasis in original).

In this case, plaintiff Collins and her class were not damaged by the defendant's actions in violation of the injunction. On October 1, 1984, as required by DEFRA, the Director amended Ohio law to conform with the requirements of 42 U.S.C. § 602(a)(38). As of that date, plaintiff Collins and her class were no longer entitled to benefits as determined by the prior law. Therefore, they were not harmed as a result of the Director's action, since, under the law, they were receiving all the benefits to which they were entitled. As civil contempt seeks to remedy a deprivation or a loss, and not to create additional rights, the district court erred in finding defendant Barry in contempt and awarding a restoration of reduced or terminated benefits as a remedy. *See Gilliard*, 107 S. Ct. at 3015, n.12 ("ruling that the DEFRA amendment is constitutionally valid requires reversal of both the district court's award of prospective relief and its award of retroactive relief.").

III.

Accordingly, the judgments of both district courts are REVERSED and VACATED. We REMAND the cases to the

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respective district courts from which these appeals arose with instructions to enter judgments for the defendants.

No. 87-5248

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PATSY BRADLEY, ON BEHALF OF
HERSELF AND HER MINOR
CHILDREN, AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff-Appellant,

v.

E. ALLEN AUSTIN, OFFICIAL
CAPACITY, SECRETARY CABINET FOR
HUMAN RESOURCES; AND OTIS
BOWEN, SECRETARY HEALTH AND
HUMAN SERVICES, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY,

Defendants-Appellees.

ON APPEAL from the
United States District
Court for the Eastern
District of Kentucky.

Decided and Filed March 21, 1988

Before: MILBURN and GUY, Circuit Judges; and CON-
TIE, Senior Circuit Judge.

MILBURN, Circuit Judge. Plaintiff-appellant appeals from the summary judgment granted by the district court for defendants in this action challenging the Aid to Families with Dependent Children ("AFDC") program regulations enacted

by the Secretary of Health and Human Services ("Secretary") and the State of Kentucky implementing the Deficit Reduction Act of 1984 ("DEFRA"). For the reasons that follow, we affirm.

I.

Plaintiff initiated this action on August 15, 1986, seeking class-wide injunctive and declaratory relief with respect to state and federal implementation of the AFDC filing unit provision of DEFRA, 42 U.S.C. § 602(a)(38) (Supp. 1987). The complaint asserted that 45 C.F.R. § 206.10(a)(1)(vii)(B) (1986) and the corresponding Kentucky state regulations¹ contravene the Social Security Act and violate the Federal Constitutional rights of the proposed plaintiff class. Plaintiff also moved for a preliminary injunction. On September 16, 1986, the Secretary filed its opposition to the motion for preliminary injunction and moved to dismiss or, in the alternative, for summary judgment. The State of Kentucky filed similar motions on September 22, 1986.

A preliminary injunction hearing was held on September 19, 1986, following which the district court concluded that the case was amenable for summary disposition and therefore combined consideration of the preliminary injunction with a review on the merits. The certification of a class was taken under advisement. Thereafter, plaintiff filed a cross-motion for summary judgment on November 13, 1986.

On January 5, 1987, the district court granted summary judgment for the state and federal defendants, adopting as its opinion the reasons stated in the defendants' memorandum. Plaintiff filed a timely notice of appeal on March 2, 1987.

Proceedings in this court were stayed pending the disposi-

¹See 904 Ky. Admin. Regs 2:006 and 2:016 (1986).

tion by the United States Supreme Court of *Bowen v. Gilliard*, No. 86-509, and *Flaherty v. Gilliard*, No. 86-564. The Supreme Court consolidated these cases and rendered a decision upholding DEFRA's AFDC filing unit rule on June 25, 1987. *Bowen v. Gilliard*, 483 U.S. —, 107 S. Ct. 3008 (1987).

At the pertinent time period, the Bradley household, comprised of plaintiff Mrs. Bradley and her four daughters, received \$750.00 per month in governmental benefits. Mrs. Bradley received \$336.00 per month in Supplemental Security Income ("SSI"), and three of her four daughters received a combined \$414.00 per month in Old Age, Survivors, and Disability Insurance ("OASDI") benefits as minor children of a disabled wage earner. Mrs. Bradley sought an additional \$140.00 per month in AFDC benefits for her remaining daughter, a half-sibling of her other children.

Plaintiff Mrs. Bradley's request for benefits was denied because the Secretary's AFDC regulations implementing the family filing unit provision of DEFRA require the state agency to include in the application all children in the household. Since Mrs. Bradley was an SSI recipient, she was explicitly excluded from the unit and her income disregarded. See 42 U.S.C. § 602(a)(24) (Supp. 1987). However, the OASDI benefits of three of her children rendered their half-sister ineligible because the accountable family income was in excess of the standard of need for a unit of four persons as determined by the State of Kentucky.

On appeal, plaintiff argues that (1) the federal and state AFDC regulations are in irreconcilable conflict with Title II of the Social Security Act; (2) the federal regulations violate the equal protection and due process rights of the Title II children; and (3) the federal regulations violate the equal protection and due process rights of the Title II representative payees.

II.

A. *Statutory Construction*

The AFDC program, authorized under Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-15 (1983 and Supp. 1987), is a cooperative federal-state effort established by Congress in 1935 under which grants are made to states to enable them, as far as practicable under the circumstances of each state, to furnish financial assistance and services to needy, dependent children of the parents or relatives with whom they are living. 42 U.S.C. § 602 (1983 and Supp. 1987); see *Heckler v. Turner*, 470 U.S. 184 (1985); *King v. Smith*, 392 U.S. 309 (1968). Under the program, the federal government provides financial participation to match the contribution of a participating state, which administers the program and is required to submit for federal approval a "state plan" in conformity with the federal statute and implementing regulations. 42 U.S.C. § 603 (1983 and Supp. 1987); see 45 C.F.R. § 201 (1986).

States "are given broad discretion in determining both the standard of need and the level of benefits[.]" exercising their responsibility given all the circumstances of a particular state. *Shea v. Vialpando*, 416 U.S. 251, 253 (1974); see also *Rosado v. Wyman*, 397 U.S. 397, 408-09 (1970). Each state AFDC plan specifies a "statewide standard of need, which is the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea*, 416 U.S. at 253. "Both eligibility for AFDC assistance and the amount of benefits to be granted an individual applicant are based on a comparison of the State's standard of need with the income and resources available to that applicant." *Id.*

Prior to 1984, there was no requirement that all coresident family members be included in the family filing unit for determining AFDC eligibility. *Gilliard*, 107 S. Ct. at 3011. Indeed, in anticipation of the receipt of income such as social security

benefits, a family member could be selectively removed from the AFDC filing unit, which resulted in larger benefits for the family as a whole. *Id.* States were precluded from considering income or resources of excluded individuals in determining eligibility and benefits for the unit, except certain kinds of income from enumerated parental, spousal, and step-parent sources.

Title II of the Social Security Act creates several programs under which an individual may receive benefits from a social security trust fund. All of the programs are based upon the earnings record of either the individual or a related wage earner. 42 U.S.C. §§ 401-33 (1983 and Supp. 1987). A child is generally entitled to receive OASDI benefits if he or she (1) is the child of an "insured" person within the meaning of the Act; (2) is or was dependent on the insured; (3) applies; (4) is unmarried; and (5) unless disabled, is under eighteen years of age or older than eighteen years of age but still a full-time elementary or secondary student. 42 U.S.C. § 402(d) (Supp. 1987); see *Childress v. Secretary of Health & Human Services*, 679 F.2d 623, 624 (6th Cir. 1982).

Pursuant to 42 U.S.C. § 405(j)(1) (Supp. 1987), Title II payments may be paid directly to the beneficiary or may be paid to persons (sometimes referred to as "representative payees") other than the Title II recipient. Section 405(j)(1) provides:

When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

Once payment to a representative payee is elected, the representative payee must use the OASDI benefits for the sole benefit of the beneficiary. See 20 C.F.R. §§ 404.2035-404.2045 (1987). Otherwise, the representative

payee is subject to both criminal and civil liability. 42 U.S.C. § 408(e) (1983 and Supp. 1987); *see also* 20 C.F.R. § 404.2041 (1987).

DEFRA made several changes in the AFDC program, including one involving the composition of a filing unit for AFDC assistance.² This amendment was initially proposed by Health and Human Services Secretary Heckler, and the language of the provision that ultimately passed is virtually identical to the Secretary's proposed amendment. *Gilliard*, 107 S. Ct. at 3012. The Secretary's proposed amendment initially became part of the draft of the Omnibus Reconciliation Act of 1983. Subsequently, the proposal was incorporated into the Senate version of DEFRA. *Id.* at 3012-13.

In 1984, the Senate Committee on Finance provided the following explanation of the amendment:

Present Law

There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. For example, a family might choose to exclude a child who is receiving *social security* or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child. . . .

Explanation of Provision

The provision approved by the Committee would require States *to include* in the filing unit the parents

²"The Senate Finance Committee estimated that the change would save \$455,000,000 during the next three fiscal years." *Bowen v. Gilliard*, 107 S. Ct. 3008, 3013 (1987).

and all dependent minor siblings . . . living with a child who applies for or receives AFDC.

This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole.

Bowen v. Gilliard, 107 S. Ct. at 3013 (quoting S. Rep. No. 169, 98th Cong., 2d Sess., Vol. 1, at 980) (emphasis supplied). See also H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1407, reprinted in 1984 U.S. Code Cong. & Admin. News 697, at 2095. The Conference version of DEFRA was identical to the Senate version with one added modification, *i.e.*, "a monthly disregard of \$50 of child support received by a family [was] established." *Id.*; see *Gilliard*, 107 S. Ct. at 3013.

Section 2640(a) of DEFRA, as codified, provides:

A State plan for aid and services to needy families with children must-

...

(38) provide that in making the determination under paragraph (7) [concerning income and resources] with respect to a dependent child in applying paragraph (8) [concerning certain disregards of income], *the State agency shall . . . include*

(A) any parent of such child, and

(B) any brother or sister of such child, . . .

if such parent, brother, or sister is living in the same house as the dependent child, and *any income of or available* for such parent, brother, or sister shall be included in making such determination and apply-

ing such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter)[.]

42 U.S.C. § 602(a)(38) (Supp. 1987) (emphasis supplied). Thus, Congress clearly intended to prohibit the prior practice of excluding siblings with income and resources from the family filing unit in order to allow other family members to qualify for AFDC benefits. The Secretary's regulations implementing the congressional redefinition of the family filing unit provide that in determining AFDC eligibility, the income of any natural or adoptive parents, step-parents, and blood-related or adoptive brother or sisters *must* be included in determining family eligibility.³

Plaintiff argues, however, that the Secretary's regulations implementing DEFRA's redefinition of the family filing rule are in direct conflict with Title II, 42 U.S.C. § 401 *et seq.*, as the requirement that OASDI benefits and beneficiaries be included in the AFDC family filing unit requires the representative payee or the Title II recipient to use such benefits not only for the benefit of the named beneficiary, but for other family members as well. Therefore, plaintiff argues that the regulations force the representative payee to use OASDI benefits for the entire family, thus forcing the representative payee, at the risk of criminal and civil liability, to violate

³45 C.F.R. § 206.10(a)(1)(vii) (1986) provides:

For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent . . . ;
and

(B) Any blood-related or adoptive brother or sister.

the regulations limiting OASDI benefits solely for the support of the named beneficiary.⁴

In determining the meaning of legislation, we must first look to the plain language of the statute itself. *McBarron v. S & T Indus., Inc.* 771 F.2d 94, 97 (6th Cir. 1985). If we find that the statutory language is unambiguous, then that language is regarded as conclusive unless there is a clearly expressed legislative intent to the contrary. *United States v. Premises Known as 8584 Old Brownsville Road, Shelby County, Tennessee*, 736 F.2d 1129, 1130 (6th Cir. 1984). If we find that the statute is ambiguous, we then look to its legislative history. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

In the present case, however, 42 U.S.C. § 602(a)(38) clearly "reveals Congress' intent that 'any income of or available for such parent, brother, or sister *shall be included* in making [the AFDC] determination and applying such paragraph with respect to the family . . . ' if the brother or sister is living with the dependent child." *Oliver v. Ledbetter*, 821 F.2d 1507, 1512 (11th Cir. 1987) (emphasis in original). See also *Gorrie v. Bowen*, 809 F.2d 508, 513-15 (8th Cir. 1987). Further, the statute explicitly states that it operates "notwithstanding [42 U.S.C.] section 405(j) . . . in the case of benefits provided under subchapter II of this chapter." As indicated earlier, section 405(j) requires that OASDI benefits be used by the representative payee for the sole benefit and use of the beneficiary and expressly prohibits OASDI benefits for the use and benefits of other resident children.

Thus, if, as plaintiff argues, the Secretary's regulations concerning AFDC benefits are in irreconcilable conflict with

⁴We note that district courts in this circuit have rendered conflicting decisions. Compare *Ardister v. Mansour*, 627 F. Supp. 641 (W.D. Mich. 1986) (upholding the Secretary's interpretation) with *Gibson v. Sallee*, 648 F. Supp. 54 (M.D. Tenn. 1986) (rejecting the Secretary's interpretation) (prelim. injunction - both cases).

Title II limitations on the use of OASDI benefits, then the statutory language indicating that it applies, notwithstanding section 405(j), "clearly indicates that Congress anticipated the alleged incongruence" and intended that section 602(a)(38) would prevail. *Gorrie*, 809 F.2d at 518. Once section 405(j) is made inapplicable to the situation, then it logically follows that the criminal and civil sanctions contained in 42 U.S.C. section 408 are inapplicable as well. *Id.*; see also *Huber v. Blinzinger*, 626 F. Supp. 30 (N.D. Ind. 1985).⁵

Perhaps the strongest support for plaintiff's position can be found in the inalienability provision of Title II, 42 U.S.C. § 407(a) (1983):

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Congress has also established requirements for any legislation seeking to modify the anti-alienation provision:

No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

⁵Our statutory interpretation is also bolstered by the now well-settled principle of statutory construction that a reasonable interpretation of a statute by the agency to which Congress has intrusted the statute's administration is entitled to deference. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984); see also *Connecticut Dep't of Income Maintenance v. Heckler*, 471 U.S. 524, 532 (1985) ("agency's construction need not be the only reasonable one in order to gain judicial approval.").

42 U.S.C. § 407(b) (1983).

We conclude, however, that "[t]he Secretary's regulation does not subject Title II benefits to legal process . . . nor does it result in an assignment or transfer of benefits. It *requires only* that Title II benefit recipients apply for AFDC and have their incomes included in the family filing unit." *Gorrie*, 809 F.2d at 517 (emphasis added). The inclusion of this income in determining need "does not constitute a use of legal process to garnish or attach benefits." *Id.* In our view, 42 U.S.C. section 602(a)(38) does not assign or transfer Title II benefits away from the beneficiary to others, but simply mandates that OASDI income be considered in determining the overall need of a family. "To the extent that sharing of income among family members occurs after the benefits are paid to the representative payee, it is not prohibited by the anti-alienation provision. The use of Title II benefits by a representative payee is specifically governed by other provisions of Title II." *Id.* Section 602(a)(38) amended those sections; viz., 20 C.F.R. §§ 404.2035 - 404.2045 (1987). *See also* 42 U.S.C. § 408(e). The anti-alienation provision was not affected.

Plaintiff further argues that the Secretary's regulations implementing DEFRA violate the principle of "actual availability." The "actual availability" principle prohibits states from counting nonexistent or unrealizable income, or income which is unavailable as a matter of law when making AFDC eligibility decisions. *Heckler v. Turner*, 470 U.S. 184 (1985). The principle "has served primarily to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients." *Id.* at 200. *See Van Lare v. Hurley*, 421 U.S. 338 (1975); *Lewis v. Martin*, 397 U.S. 552 (1970); *King*, 392 U.S. at 309.

In the present case, plaintiff argues that since Title II benefits are restricted to the sole use of the named beneficiary,

those benefits are not available to the family as a whole and cannot be considered as familial income. However, we agree with the holding in *Gorrie* that "this is not a case of a recipient's need being 'artificially depreciated,' as the availability principle forbids. Rather, it is a case of Congress exercising its power to redirect the focus of AFDC need determinations." *Gorrie*, 809 F.2d 515-16. Congress has "determined that most AFDC households share expenses relating to food and shelter, and thus authorized the use of OASDI benefits for coresident siblings." *Oliver*, 821 F.2d at 1513. Thus, we conclude, as did the courts in *Gorrie* and *Oliver*, that the Secretary's regulations do not violate the principle of "actual availability."⁶

B. Constitutional Argument

We begin our analysis of the constitutional issues by noting our limited and deferential standard of review. "[T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of [federal courts]." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970). "Governmental decisions to spend money to improve the general public welfare in one way and not another are not confided to the courts. The discretion belongs to Congress unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment." *Bowen*, 107 S. Ct. at 3015 (quoting *Mathews v. De Castro*, 429 U.S. 181, 185 (1976)). Our limited scope of review "is premised on Congress' 'plenary power to define the scope and the duration of the entitlement to . . . benefits, and to increase, to decrease,

⁶The plaintiff also argued below that siblings receiving OASDI benefits are not to be included in the AFDC family filing unit because those children are adequately supported by a parent and are not dependent children as defined by the statute. While not advanced on appeal, we note that two circuits have subsequently rejected those arguments. *Oliver*, 821 F.2d at 1513; *Gorrie*, 809 F.2d at 513-14.

or to terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program.' " *Bowen*, 107 S. Ct. at 3015 (quoting *Atkins v. Parker*, 472 U.S. 115, 129 (1985)). Thus, we will not disturb the economic decisions of Congress as long as Congress had a rational basis for its determinations. See *Lyng v. Castillo*, 477 U.S. 635 (1986). In sum, "the Constitution does not empower [federal courts] to second-guess . . . officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge*, 397 U.S. at 487.

1. *Due Process*

Plaintiff contends that the Secretary's regulations implementing DEFRA violate the substantive due process rights of Title II children living with AFDC families because the regulations impose on a group of children the responsibility of supporting their needy siblings in violation of the fundamental due process requirement that "legal burdens should bear some relationship to individual responsibility." *Pickett v. Brown*, 462 U.S. 1, 7 (1983) (quoting *Weber v. Aetna Casualty & Sur. Co.*, 406 U.S. 164, 175 (1972)). Initially, however, the plaintiff's due process claims "must fail because they are based on the erroneous premise that OASDI recipients enjoy a constitutionally protected right against having the amount of their benefits modified by Congress." *Oliver*, 821 F.2d at 1514. Title II recipients have no constitutionally protected interest against congressional modification of their benefits. See *Weinberger v. Salfi*, 422 U.S. 749, 772 (1975); see also *Richardson v. Belcher*, 404 U.S. 78, 80-81 (1971); *Flemming v. Nestor*, 363 U.S. 603, 608-11 (1960). Since the recipients have no protected constitutional interest, our review is, as indicated above, deferential and limited to whether the legislation amounts to arbitrary governmental action.

As indicated above, the pertinent legislative history of 42 U.S.C. section 602(a)(38) reveals that Congress, in allocating

limited public welfare funds, has determined that family members living together reasonably pool their income and resources on such items as food and housing. We conclude "that the statute is rationally related to the legislative goal of distributing limited welfare benefits to those families most in need." *Oliver*, 821 F.2d at 1515. "[I]t is rational and consistent with the purposes of the AFDC program for Congress to structure AFDC eligibility determinations in a manner that focuses on the needs of family units instead of individuals." *Gorrie*, 809 F.2d at 524. While Mrs. Bradley may disagree with Congress' rationale, federal court is not the appropriate forum in which to raise her complaints.

Finally, our conclusion that the regulations do not violate the due process rights of the Title II beneficiaries is, in our view, mandated by the Supreme Court's holding in *Gilliard* that inclusion of child support benefits and beneficiaries (another type of exclusive use income) in the family filing unit does not violate the child support recipient's due process rights. *Gilliard*, 107 S. Ct. at 3015-18. For the purposes of due process analysis, no principal distinction exists between social security benefits and child support payments.

Plaintiff further argues that the Secretary's regulations violate the due process rights of the representative payees by making the family's income depend on the payees' willingness to violate the law. However, as we earlier concluded that 42 U.S.C. section 602(a)(38) made the criminal and civil sanctions inapplicable to representative payees in this situation, it logically follows that this due process argument summarily fails. It is no longer a violation of the legal or fiduciary duties of representative payees to use OASDI benefits to meet the shared subsistence needs of the OASDI recipient and other coresident members of the family. See *Gorrie*, 809 F.2d at 518.

2. Equal Protection

Plaintiff argues that the Secretary's regulations violate equal protection rights as guaranteed by the Fifth Amend-

ment in that the regulations impose burdens on one class of Title II children, those living with other needy siblings, in an arbitrary and capricious manner. Plaintiff concedes, however, that neither a suspect classification nor a fundamental right is implicated. Therefore, the legislative classification is subject to only "rational basis" scrutiny. *See City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440-42 (1985). Thus, the legislative classification is legitimate and valid if it "rationally furthers a legitimate state purpose." *Zobel v. Williams*, 457 U.S. 55 (1982).

In this case, as indicated above, there is a clear rational basis for Congress' action. As the Court noted in *Gilliard*, the rationality of the filing unit provision lies (1) in the government's "interest in distributing benefits among competing needy families in a fair way," (2) in Congress' assumption that payments to one individual in a family are "generally beneficial to the entire family unit," and (3) "the common sense proposition that individuals living with others usually have reduced per capita costs because many of their expenses are shared." *Gilliard*, 107 S. Ct. at 3016 (quoting *Termini v. Califano*, 611 F.2d 367, 370 (2d Cir. 1979). "Although this situation may appear unfair, it does not amount to a constitutional violation." *Oliver*, 821 F.2d at 1516.

Finally, plaintiff argues that the Secretary's regulations violate the equal protection rights of the representative payees in that representative payees living in a household with AFDC recipients are required to violate their fiduciary duties while payees who do not live with AFDC recipients are not so obligated. However, as we have previously concluded that these representative payees will not be subject to liability for using OASDI benefits for *shared subsistence expenses*, plaintiff's argument necessarily fails. If Congress did create classes of representative payees, such classification is not arbitrary and, as indicated above, rationally furthers federal and state governmental interests in distributing limited funds

to the most needy families and in reducing the Nation's deficit.

III.

Finding that the federal and state family filing unit regulations are consistent with the congressional mandate contained in the Deficit Reduction Act of 1984, the Social Security Act, and the Fifth and Fourteenth Amendments to the United States Constitution, the judgment of the district court is **AFFIRMED**.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION

DOROTHY COLLINS, et al.,	:	C69-830
	:	
Plaintiffs,	:	<u>ORDER</u>
	:	
PATRICIA K. BARRY, et al.,	:	
	:	
Defendants.	:	

BATTISTI, C.J.

On January 22, 1971, an order was entered which prohibited the state and county public welfare departments from defining in a certain way the "family unit rule," which defendants employed to determine eligibility and payment levels for the Aid to Families with Dependent Children ("AFDC") program. Under that former state rule, Social Security Old-Age, Survivors, and Disability Insurance ("OASDI") or Title II income of child

beneficiaries was treated as income available to the family generally. As a result of this rule, AFDC benefits were denied or paid at reduced levels to the families of which a member was receiving OASDI benefits. Plaintiffs claimed that OASDI benefits were to be used exclusively for the intended beneficiaries, and to do otherwise would be to violate certain fiduciary duties under federal law.

Two questions were raised in plaintiffs' suit: an alleged deprivation of the Fourteenth Amendment right to equal protection of the laws, and the incompatibility of the state procedure with federal social security statutes and regulations. Because of the finding that a conflict between state and federal law

existed, there was no need to reach the question of equal protection. 1/ Depending on which side one takes in the present matter, these two issues once again may or may not exist in this Court. Plaintiffs argue that these two issues do in fact remain; defendants argue that through the Deficit Reduction Act of 1984, the addition of §402(a)(38) to

1. Plaintiffs renew their argument based on equal protection grounds. See Plaintiffs' Motion to Show Cause 13 n.12. This appears to be another problem which was not addressed by either Congress in passing the amending legislation here under examination, or by the Executive in proposing the amendment and in implementing it. As such, the equal protection problem, though standing alone perhaps insufficient to support the holding reached today, provides further evidence to support the conclusion that Congress did not mean to repeal the various statutory provisions, cited and discussed infra, which ultimately led to the order of January 22, 1971.

Title IV of the Social Security Act definitively resolved these issues. Defendants specifically argue that in light of this statutory change, the federal-state conflict underlying the 1971 injunction no longer exists. Accordingly, defendants have moved the Court for relief from the order of January 22, 1971. On the other hand, plaintiffs have requested an order holding defendants in contempt for violation of this order.

The issue to be resolved is whether 42 U.S.C. §602(a)(38) requires recipients of OASDI benefits to be counted in the "standard filing unit" when determining AFDC benefits. Admittedly, the instant case presents a slight twist insofar as the parties and the Court must deal with

an earlier injunction prohibiting what defendants now are doing under the claimed shield of state and federal law. Nevertheless, the issue still remains as to whether the Deficit Reduction Act did indeed bring about the changes which defendants argue, and the answer to this question still requires an examination of §602(a) (38). Defendants argue that the recent statutory amendments promulgated through the Deficit Reduction Act require this inclusion. Plaintiffs argue that the amendment requires this inclusion only in certain limited circumstances. Good lawyering combined with unclear and ambiguous congressional and executive action have forced a judicial resolution to this rather complex issue.

Arguments from both sides presented to the various district courts which have dealt with the issue have produced well-reasoned opinions but at times irreconcilable results. Upon consideration of these holdings, and of the excellent briefing of this issue in the matter now before the Court, 2/ defendants are hereby adjudged in ~~contempt~~ of this Court for having violated the terms of the

2. In their Motion for Relief from Judgment, defendants requested that their motion as well as plaintiff's Motion to Show Cause be set for hearing. The parties had an opportunity to present their arguments briefly to the Court during an in-chambers conference. Furthermore, excellent briefing of this matter by both sides has greatly assisted the Court in resolving this matter. Consequently, for these reasons and with the hope of expediting this present order, the Court decided that an additional formal hearing in this matter was unnecessary.

the final judgment entered in this case on January 22, 1971. Accordingly, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On January 22, 1971, a final order was issued in this matter. The case concerned families in which one or more children received OASDI benefits, provided under Title II of the Social Security Act, paid to them through a parent acting as their fiduciary (then called "trustee," now called "representative payee"). The Director of the Ohio Department of Public Welfare (now the Ohio Department of Human Services) had promulgated and was then enforcing a "family unit rule," Ohio Public

Assistance Manual ("OPAM") §452.1, which was utilized to determine eligibility and payment levels in the AFDC program. Under the rule, the OASDI income of child beneficiaries was treated as income available to the family (i.e., parents and half-siblings) generally. As a result of this rule, AFDC benefits were denied or paid at reduced levels to needy children in the family unit who themselves did not receive OASDI benefits.

2. The Court held that the family unit rule conflicted with the language and spirit of the social security laws. The rule violated specifically 42 U.S.C. §§402(d) and 408(e), which entitle OASDI child beneficiaries to receive OASDI benefits in their own right and which

obligate their representative payee to devote the benefits to their use and benefit or face prosecution. The rule also violated the AFDC availability principle enunciated in Lewis v. Martin, 397 U.S. 552 (1970) (holding that income of stepfathers or certain non-legally obligated men could not be assumed to be available to needy children under 42 U.S.C. §602(a)(7)), by treating OASDI benefits of non-legally obligated children as available to the needy children in the family unit. The family unit rule further had the untoward effect of forcing the representative payee to violate her fiduciary relationship with the OASDI beneficiaries by using OASDI benefits to support the needy children in the family.

3. Accordingly, the Court permanently enjoined defendants "from enforcing Section 452.1 of the Ohio Public Assistance Manual as it now reads, so as to include as 'available family income' any income which under the terms of the Social Security laws and regulations is not available to the family generally but is restricted to the use and benefit of a named beneficiary." Order, Jan. 22, 1971, at 6. This permanent injunction ran in favor of the plaintiff class, which consisted of all Ohio families in which there are both needy children and children receiving OASDI benefits.

4. On July 18, 1984, Congress passed the Deficit Reduction Act of 1984, part of which amended Title IV of the

Social Security Act (the AFDC program) by adding a new paragraph (38) to §402(a). Codified at 42 U.S.C. §602(a)(38), the new paragraph provides:

(a) A state plan for aid and services to needy families with children must

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include--

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a) [42 U.S.C. §606(a)], if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such

paragraph with respect to the family (notwithstanding section 205(j) [42 U.S.C. §405(j)] in the case of benefits provided under title II).

5. On September 10, 1984, the United States Department of Health and Human Services promulgated a regulation interpreting 42 U.S.C. §602(a)(38). See 49 Fed. Reg. 35586 et seq. Codified at 45 C.F.R. §206. 10(a)(1)(vii), the regulation, which became effective October 1, 1984, provides:

For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister.

6. Effective October 1, 1984, the Ohio Department of Human Services adopted an AFDC "standard filing unit rule" interpreting this federal regulation. A consequence of this rule's enforcement is the defendants' adoption of a policy whereby OASDI benefits of a child paid through a representative payee are treated as income available to the family generally when determining AFDC eligibility and payment level for the entire family. Before plaintiffs' filing of their Motion to Show Cause, defendants did not seek any order from this Court to modify in any way the order of January 22, 1971, despite their conduct which, by their own admission, was contrary to the terms of that order. See Defendants' Motion for Relief from Judgment 12 [sic].

7. Defendant Patricia K. Barry, currently Director of the Ohio Department of Human Services, is responsible for the administration of the ADC program in Ohio and promulgated OPAM §4501 and Ohio Administrative Code ("OAC") §5101:1-21-011, known as "the standard filing unit rule."

8. Plaintiff Marquittius Bearden is a class member affected adversely by the new standard filing unit rule and brings this contempt action by and through her grandmother, Daisy Bearden.

9. Daisy Bearden is the grandmother of Marquittius and Marquittius' half-sister, Latonya Bearden. Latonya and Marquittius (ages 15 and 11, respectively) are daughters of Linda Bearden, Daisy Bearden's daughter,

but by different fathers.

10. Until November 1985, Daisy Bearden received AFDC benefits for both Latonya and Marquittius. That month Latonya began to receive OASDI benefits because her father had died. Daisy Bearden received these payments as Latonya's representative payee. Marquittius does not receive OASDI benefits because she had a different father.

11. Due to the operation of the standard filing unit rule, Marquittius was denied AFDC benefits because of the OASDI benefits paid to her half-sister, Latonya, through Daisy Bearden, Latonya's representa-tive payee.

12. But for the standard filing unit rule, Marquittius would have been

entitled to receive \$180 per month in AFDC benefits.

13. On May 2, 1986, plaintiffs filed a Motion to Show Cause asking this Court to hold defendant Patricia K. Barry in contempt for violating this Court's previous order of January 22, 1971.

14. On May 27, 1986, defendant Barry filed a Reply to the Motion to Show Cause, arguing that the order of January 22, 1971 had expired according to its own terms, that impossibility of performance had relieved her of the injunction, and that changes in the law, specifically the enactment of 42 U.S.C. §602 (a)(38), had made the order of January 22, 1971 obsolete.

15. On June 11, 1986, defendant Barry also filed a Motion for Relief from

Judgment under Fed. R. Civ. P. 60(b) to seek a dissolution of the order of January 22, 1971 on the grounds that federal law underlying the injunction had been changed by the enactment of §602(a)(38).

16. The order of January 22, 1971 remains in full force and effect. It has not been modified or reversed. Nor has defendant Barry previously sought relief from that order and her enforcement of the standard filing until rule continues unabated.

CONCLUSIONS OF LAW

1. The permanent injunction ordered by this Court on January 22, 1971 remains in full force and effect. The addition of 42 U.S.C. §602(a)(38) to the

Social Security Act, accomplished through the passage of the Deficit Reduction Act of 1984, did not undermine the validity of such order. This amendment did not repeal, either expressly or impliedly, 42 U.S.C. §§402(d) and 408(e), the statutory basis of the order of January 22, 1971. Under these provisions, OASDI benefits paid to a representative payee in trust for a minor beneficiary cannot be deemed as income available to the family generally but are restricted to use for the sole benefit of the minor beneficiary. White Horse v. Heckler, 627 F. Supp. 848, 852 (D.S.D. 1985); Frazier v. Pingree, 612 F. Supp. 345 (M.D. Fla. 1985).

2. Reading the ambiguous language of §602(a)(38) as an implied repeal of

§§402(d) and 408(e) violates the well-established rule of construction against such implied repeals where another construction is possible. Repeals by implication are not favored, and apparently conflicting statutes should be interpreted in a way that gives effect to each. Watt v. Alaska, 451 U.S. 259 (1981); United States v. Hansen, 772 F.2d 940 (D.C. Cir. 1985), cert. denied, 106 S.Ct. 1262 (1986). Implied repeals should only be found where the manifest and clear intent of Congress so indicates. Kremer v. Chemical Construction Corp., 456 U.S. 461, reh'g denied, 458 U.S. 1133 (1982).

3. Defendant Barry's interpretation of §602(a)(38) would work an implied repeal of §§ 402(d) and

408(e). Because it is neither clear nor manifest that Congress intended to repeal §§402(d) and 408(e), this Court rejects defendant Barry's interpretation.

4. At the same time, a strong presumption attaches requiring a court to give some meaning to all statutory language. Rosado v. Wyman, 397 U.S. 397, 415 (1970) (construing "all legislative enactments to give them some meaning" in the context of potentially conflicting statutory provisions of Title II and AFDC). To attribute meaning to §602(a)(38) while at the same time retaining the meaning of §§402(d) and 408(e), the Court construes §602(a)(38) to require the inclusion of OASDI benefits of a child which are either legally available or actually made

available to the family generally by the representative payee, but not otherwise. Thus, where a representative payee actually makes a portion of a child's OASDI benefits available to the family generally, that portion is to be treated as income available to the family generally. Gorrie v. Heckler, 624 F. Supp. 85 (D. Minn. 1985). Likewise, where a parent OASDI beneficiary receives benefits through a representative payee, those benefits are to be treated as legally available to the beneficiary's children. Cunningham v. Toan, 728 F.2d 1101 (8th Cir. 1984), vacated, 105 S.Ct. 896 (1985), modified on remand, 762 F.2d 63. So construed, §602(a)(38) puts a stop to the long-standing practice which allowed families to exclude at their

option OASDI beneficiaries from the household, whether or not the benefits were actually or legally available to other family members.

5. Statutory support for this interpretation is also found at 42 U.S.C. §407, which provides that OASDI payments are neither transferable nor assignable at law or in equity and shall not be subjected to any legal process. This inalienability provision is "all-inclusive" and has been strictly construed to limit transfers of any social security benefits. Tidwell v. Schweiker, 677 F.2d 560, 567 (7th Cir. 1982), cert. denied, 461 U.S. 905 (1983). It "imposes a broad bar against the use of any legal process to reach all social security benefits." Philpott v. Essex

County Welfare Board, 409 U.S. 413, 417 (1973). Thus, the coerced transfers of OASDI benefits, which necessarily result under the standard filing unit rule, facially violate the inalienability provision of 42 U.S.C. §407(a). Congress could not have contemplated such a result through the enactment of §602(a)(38), because it did not expressly refer to §407, as required by §407(b), when allegedly amending the inalienability provision. Gorrie, supra, at 90. Compare 42 U.S.C. §659(a).

7.[sic] The standard filing unit rule also facially violates the terms of 42 U.S.C. §602(a)(38), because it ignores that provision's conditional language which incorporates by reference 42 U.S.C. §606(a)(1) and (2), which refers to "needy" children deprived of parental

support or care for various reasons. The neediness condition is incorporated in 45 C.F.R. §206. 10(a)(1)(vii) by the phrase "and otherwise eligible for assistance." The standard filing unit rule violates this condition by automatically requiring the inclusion of non-needy OASDI child beneficiaries.

7. The AFDC availability principle is also relevant to a resolution of the matter before the Court. Sec. 602(a)(38) refers to the determination of AFDC eligibility made under §602(a)(7). Historically, the words "any income" as used in §602(a)(7), and repeated in §602(a) (38), have been held to include only income that is actually and/or legally available. Heckler v. Turner, 105 S. Ct. 1138, 1147-

48 (1985); Turchin v. Butz, 405 F. Supp. 1263 (D. Minn. 1976); Elam v. Hanson, 384 F. Supp. 549 (N.D. Ohio 1974); Snider v. Creasy, 728 F.2d 369 (6th Cir. 1984). In the context of this case, OASDI benefits are clearly not legally available to the entire family by virtue of §§402(d), 408(e) and 407. Moreover, if a representative payee actually makes a beneficiary's OASDI benefits available to others, he or she is liable for criminal penalties under §408(e). In light of the definitional limitations, defendants cannot assume existing income is automatically available to the other members of the family unit. The availability principle thus buttresses this Court's construction of §602(a)(38) as being consistent with §§402(d), 408(e)

and 407, as well as with the traditional understanding of §602(a)(7).

8. Courts should accord substantial deference to administrative agencies' interpretation of statutes which they are charged to execute. Blum v. Bacon, 457 U.S. 132 (1982); Schweiker v. Hogan, 457 U.S. 569 (1982); Miller v. Youakim, 440 U.S. 125 (1979). The Court finds the most reasonable interpretation of 45 C.F.R. §206.10(a)(1)(vii) to be that it incorporates the "neediness" requirement and thus is consistent with the Court's interpretation of §602(a)(38). Even if this Court's reading of the regulation is wrong, however, the Court stands by its interpretation of the statute. While administrative interpretations should be accorded

deference, they are not controlling. Batterton v. Francis, 432 U.S. 416 (1977). In particular, an administrative agency's interpretation cannot control when there are compelling indications that it is wrong, New York State Dept. of Social Services v. Dublino, 413 U.S. 405 (1973), or when such an interpretation would change the clear language of the law, Southeastern Community College v. Davis, 442 U.S. 397 (1979). Thus, the HHS interpretation of §602(a)(38), found at 45 C.F.R. §206.10(a)(1)(vii), is not binding upon this Court, and this Court declines to defer to it to the extent that it violates 42 U.S.C. §§402(d), 407 and 408(e), as discussed above.

9. The order of January 22, 1971 is reaffirmed because [sic] the Court

finds that the recent amendment of the Social Security Act through 42 U.S.C. §602(a)(38) neither expressly nor impliedly repealed §§402(d), 407 or 408(e), provisions which specifically protect the OASDI benefits of child beneficiaries, nor abridged the AFDC availability principle. Thus, there are no grounds for relief from judgment under Fed. R. Civ. P. 60(b)(5) or (6).

10. For the foregoing reasons, defendant Barry is adjudged to be in contempt of this Court for having directly violated the injunction incorporated in the final order entered in this case on January 22, 1971.

11. Defendant Barry's other defenses to contempt are without merit. The order of January 22, 1971 has not expired, and defendant Barry has failed

to establish that it was either factually or legally impossible for her either to have continued to comply with that order or to have sought relief from judgment in a timely fashion.

12. The Eleventh Amendment is no bar to the enforcement of the order of January 22, 1971, and is no bar to following a remedial order. Fortin v. Commissioner of Mass. Dept. of Public Welfare, 692 F.2d 790 (1st Cir. 1982); Daubert v. Percy, 713 F.2d 328 (7th Cir. 1983), cert. Denied, 465 U.S. 1026 (1984).

O R D E R

1. Plaintiff's Motion to Show Cause is hereby granted. Defendant

Barry's Motion for Relief from Judgment is hereby overruled.

2. Defendant Barry is in contempt of Court. She shall purge herself of her contempt forthwith by bringing the ADC program in Ohio into compliance with the permanent injunctive of January 22, 1971, by maintaining compliance with the injunction at all times in the future, and by restoring lost ADC benefits (i.e., cash assistance and Medicaid coverage) to all class members who have been, are being, or will be denied any benefits under the standard filing unit rule, OPAM §4150 and OAC §5101:1-21-011, as presently written.

3. Defendant Barry shall forthwith promulgate a revised version of OPAM §4150 and OAC 5101:1-21-011 that

adds in bold print at the beginning of each: "Specifically excluded from this requirement are children receiving Title II (OASDI) benefits through a representative payee. The Title II income of a minor beneficiary shall not be deemed as income to the child's parents or other caretakers or siblings, unless actually or legally made available to them."

4. Defendant Barry shall, within 15 days of this order, submit to the Court for approval and to plaintiffs' attorneys for comment:

A. A letter to be provided to the director of each county welfare department directing strict compliance with the revised OPAM and OAC provisions and directing that each employee involved

in the administration of the ADC program be actually notified of this revised rule and the reasons for it, and including a copy of the final order entered January 22, 1971, a copy of this memorandum and order, and a copy of the revised OPAM and OAC provisions.

B. A poster informing applicants and recipients of the revised policy and a cover letter to each county welfare department director directing that at least two copies of the poster be prominently posted in each waiting area for a period of six months.

5. Defendant Barry shall, within 30 days of this order, submit to the Court for approval and to plaintiffs' attorneys for comment a plan for restoring lost ADC benefits to class

members who, since October 1, 1984, have been denied ADC benefits and who have had benefits reduced or terminated as a result of the enforcement of the standard filing unit rule. The plan shall include a procedure for identifying class members, for notifying them, for providing lost benefits to them, for providing a fair hearing process to resolve disputes; shall include a timetable for doing so within 60 days; and shall include a provision for reporting to the Court about the implementation and results of these procedures.

6. Defendant Barry shall pay plaintiffs' costs and reasonable attorney fee, application for which shall be made

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after defendant Barry certified [sic] to
the Court that she has accomplished all
the relief ordered above.

IT IS SO ORDERED.

Frank J. Battisti, Chief Judge

